



1D#13735  
mJ

Fred Toler  
Executive Director

**Texas Commission on  
Law Enforcement Officer Standards and Education**

1033 LA POSADA, SUITE 240

AUSTIN, TEXAS 78752

Phone: 512-450-0188

September 25, 1991

RQ-207

RECEIVED

SEP 27 91

Opinion Committee

The Honorable Dan Morales  
Attorney General of Texas  
Price Daniels Building  
Austin, Texas 78701

RE: The public interest and concerning the official duty of the Texas  
Commission on Law Enforcement Officer Standards and Education

Dear Honorable Morales:

Pursuant to Section 402.042 of the Government Code, I hereby request an official Attorney General's Opinion regarding a matter affecting the public interest and concerning the official duty of the Texas Commission on Law Enforcement Officer Standards and Education, (the "Commission").

Article 4413(29aa) Section 8A was the statutory provision in effect when the Court of Appeals, Third Supreme Judicial District of Texas, at Austin, held in the cause styled Dee Wayne Thompson v. Texas Commission on Law Enforcement Officer Standards and Education, January 26, 1983 (see Exhibit "A") that one who had completed probation could not be denied a license based on a felony conviction when the offense is dismissed and the individual is released from all penalties and disabilities resulting from the crime or offense. However, effective September 1, 1983, the predecessor to §415.058 of the Government Code was amended by Acts 1983, 68th Leg., p. 2809, Ch. 479, §3, and based on this amendment the Commission has interpreted its language to require the revocation or denial of an individual's license(s) when one is convicted of a felony. For example:

- (a) when the individual is convicted as per the judgment and then released from probation and a new trial granted and the judgment of conviction is set aside; or
- (b) when the individual is convicted as per the judgment and then released from probation and the court allows the person to withdraw their plea of guilty, the indictment against the defendant is dismissed and the judgment of conviction is set aside; or

**ACCOMPANIED BY ENCLOSURES —  
FILED SEPARATELY**

The Honorable Dan Morales  
Page - 2 -  
September 25, 1991

- (c) when the individual's conviction is dismissed and they are released from all penalties and disabilities.

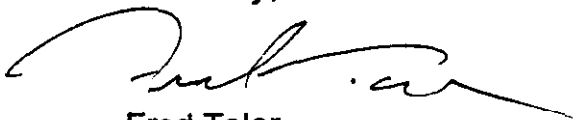
*Is this a correct interpretation of §415.058 considering the case law and legislative intent?*

The Commission contends that the term felony conviction as defined in §415.058 has the same legal effect as the term is used in the enhancement provisions within the Code of Criminal Procedure, is this correct?

A second issue regarding the interpretation of §415.058 is whether the Commission is required to revoke or deny the license of an individual when the court records show a conviction, but the person is pursuing a direct appeal through the courts; or must the Commission wait until the direct appeal is exhausted before taking a licensing action? If the Commission is required to revoke or deny a license pending a direct appeal and this action is accomplished by a Final Order of the Commission, may the Commission re-license the individual if the appeal is successful?

If you have any questions or if we can provide you with additional information, please contact Johanna McCully-Bonner, General Counsel, at (512) 406-3618.

Sincerely,



Fred Toler,  
Executive Director

FT/JMB/eg

Enclosures

**Via Inter-Agency Mail**

cc: Via Inter-Agency Mail:  
Ms. T. Ann Kraatz  
Assistant Attorney General  
Enforcement Division  
Price Daniels Building  
Austin, Texas 78701